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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

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[27 August 1992]

Introduction

There is no need for us to emphasize before your distinguished Committee that the purpose of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is to strengthen the commitment to human rights and promote closer relations among peoples in a spirit far removed from prejudice, bigotry and misunderstandings caused by attempts to justify notions of superiority of any kind whatsoever. Moreover, this Convention highlights the fact that mankind as a whole, as well as each of its individual members, is endowed with a sacred inherent dignity which the divinely revealed religions, the philosophical and legislative systems and the successive revolutions in the history of mankind have sought to preserve from the

* The present document contains the additional report requested by the Committee against Torture at its seventh session at the end of the consideration of the initial report of the Libyan Arab Jamahiriya (CAT/C/9/Add.7) on 14 November 1991 (CAT/C/SR.93); see also the annual report of the Committee against Torture: Official Records of the General Assembly, forty-seventh session, Supplement No. 44 (A/47/44, paras. 148-159).

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shackles of material or moral repression. The numerous sources of these humanitarian aims coalesced in the Universal Declaration of Human Rights, to which my country has acceded. My country has also ratified the conventions which strengthen the principles and provisions of that Declaration, to which it has added new concepts and principles derived from the Great Green Document on Human Rights in the Age of the Masses which was issued as a United Nations document under the symbol A/44/331.

The purpose of this additional report is to rectify what your distinguished Committee regarded as shortcomings or omissions and to reply to the questions raised by its members. In my capacity as Libya's representative assigned to present the additional report, I will endeavour to remedy those shortcomings by replying to the questions and comments of the members of your distinguished Committee and outlining the legal framework which Libyan legislation provides for the implementation of the provisions of the Convention against Torture.

Additional information concerning the political system, the legislative and executive mechanisms and the judicial authority in the Jamahiriya

The political system in the Socialist People's Libyan Arab Jamahiriya is based on the principles of direct popular democracy in which the masses play their political, economic and social role and take decisions concerning the various aspects of public and private life.

The concept of direct popular democracy is based on the twin pillars of people's congresses and people's committees. The people's congresses embody the sovereign decision-making authority, since sovereignty belongs to the people who exercise it through the people's congresses. The executive authority is exercised by the people's committees. The people as a whole take the decisions through the people's congresses. The people also appoint the people's committees, which are the instruments responsible for the implementation of the decisions taken by the people's congresses, to which they report. The principle applied in the Jamahiri system (a system of direct popular democracy in which authority belongs to the people) is that the people's congresses take the decisions, which are implemented by the people's committees which are accountable to the congresses. Under the concept of direct popular democracy, the effective exercise of authority means that the people controls itself. It also means that there is no intermediary between political reality, consisting in authority, and social reality, consisting in the masses of the people. At the basic people's congresses, the people take decisions on foreign policy, planning, the economy, education, health,

defence, industry and justice and also promulgate legislation and appoint a people's committee to implement the decisions taken in each of those fields.

The legislative machinery

In keeping with this concept, the legislative authority under the system of the people's authority is exercised by the basic people's congresses, which constitute the instrument by which laws are promulgated, amended or rescinded. The basic people's congresses have undisputed authority to promulgate legislation, whenever needed, to regulate any aspect of public or private activity.

The mechanism of collective participation in legislation

Whenever legislation is needed to regulate a particular field of social life, the popular masses participating in the people's congresses and assemblies raise and debate the issue on their own initiative. Their debates determine the broad outline and objectives of the legislation and a summary of their conclusions is then referred to the People's Committee of the Secretariat for Justice which, through its competent department, draws up a bill of law for submission at the next regular session of the people's congresses which debate the text of the bill, any part of which they may amend or reject. When the text of the bill has been finalized and approved by the congresses, it is submitted, together with their recommendations, to the General People's Congress which, after considering all the opinions and amendments, promulgates the bill, which enters into force on the date of its publication in the Official Gazette.

As an alternative procedure, the general people's committee or the other secretariats, each within its particular field of jurisdiction, may submit a bill of law to the next session of the people's congresses, which discuss the bill and make any necessary amendments or reject it and send it back, with comments, to the competent people's committee so that it can be resubmitted to the congresses after any shortcomings have been rectified. In the event of the bill being approved, it is referred, together with any comments or amendments, to the General People's Congress. The latter, being the general forum in which the congresses, people's committees, trade unions and professional associations meet, acts as an expanded general drafting committee to finalize the bill, which enters into force, following its promulgation by the General People's Congress, on the date of its publication in the Official Gazette.

The mechanism of collective participation by the people in the promulgation of legislation is therefore a two-track process in which the people's congresses can either take the initiative or discuss bills of law

submitted by the General People's Committee or the people's committees of the various secretariats. In both cases, this participation makes the people's congresses the sole legislative bodies in society. In actual fact, this is an expression of the sovereignty of the people, which is exercised through the people's congresses and assemblies.

The executive authority

This comprises all the activities of government agencies in the system of the people's authority and consists of the Secretariats for Justice, Health, Foreign Affairs, Planning, the Economy, the Treasury, Communications, Education, Petroleum, Defence, etc. These activities are undertaken by people's committees, appointed directly by the masses in the people's congresses, which implement the decisions of the people's congresses in each of the above-mentioned fields. The people's committees report directly to the congresses in accordance with the principle of people's congresses, which take decisions, and people's committees, which implement those decisions and are themselves accountable to the congresses. This is the essence of direct popular democracy, as applied in Libya.

The judicial authority

This is exercised by the judicial machinery, consisting in the courts, the Department of Public Prosecutions and ancillary bodies staffed by criminal investigation officers.

The courts in Libya are divided into four types: civil courts, criminal courts, administrative courts and personal status courts (which apply Islamic law).

The Supreme Court, which is the highest judicial authority in the legal system, hears appeals brought before it in connection with civil, criminal, administrative and personal status judgements handed down by the highest courts of the four types.

The independence of the judiciary

Under the system of the people's authority, the members of the judiciary enjoy absolute immunity in the discharge of their duties, in accordance with the principle of the independence of the judiciary. As stipulated in the Constitutional Declaration, the Promotion of Freedom Act and the Organization of the Judiciary Act, judges are independent and, in the discharge of their duties, are subject to no authority other than that of the law.

Judges are selected from among candidates holding university degrees in law, or in secular and Shari'a law in the case of the personal status courts. They are appointed by the General People's Committee for Justice which, by virtue of its composition, acts as a Council of the Judiciary. The Secretary

of Justice, who heads the Committee, has no role or authority which could prejudice the independence of the judiciary or the functional performance of its members.

The Organization of the Judiciary Act confirms the principle of the independence of the members of the judiciary from the standpoint of appointment, promotion and remuneration. By virtue of the nature of the profession that they exercise, the legislature has taken care to ensure that these distinctive safeguards are totally different from the regulations governing ordinary civil servants in other government departments.

The role of the Attorney-General

In the Libyan judicial system, the Attorney-General, as head of the Department of Public Prosecutions, is empowered to institute criminal proceedings either in person or through a member of his Department (article 2 of chapter I, entitled Criminal Proceedings, of the Code of Criminal Procedure). The Attorney-General is vested by law with sole competence to institute criminal proceedings, except in cases in which a criminal action can be brought only by the injured party or by the Minister of Justice.

We have provided these additional clarifications in this section, concerning the legislative authority, the mechanisms of collective participation in the legislative process, the executive authority, the judicial authority, the system of courts and public prosecutors and the role of the Attorney-General, as part of our reply to the questions raised by the members of the Committee and the Special Rapporteur assigned to consider Libya's report at the previous session. The replies to other questions will be given in the appropriate places in each section of this report.

The legal framework for the implementation of the provisions of the Convention Against Torture, as provided for in Libyan legislation

Part One

I. The status of international conventions under Libya's national law

Every international convention which is ratified by the basic people's congresses in the Jamahiriya or to which Libya accedes, as in the case of the Convention against Torture, must be put into effect and, from the legal standpoint, prevails over the provisions of national law.

In the event of conflict between the provisions of national law and those of an international convention to which Libya has become a party, the latter provisions prevail over those of national law or legislation. In accordance with this principle, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be applied by the judiciary and any party concerned has the right to invoke it and petition the Libyan judiciary

to implement its provisions. The Libyan judiciary is under an obligation to respond to such a petition in such a way as to ensure that the provisions of the Convention are implemented, provided that the petition is substantiated on legal grounds and that the party concerned is entitled to invoke those provisions before the courts. 1/

Although there is no inconsistency between the provisions of the Convention in question and the Libyan Penal Code, Code of Criminal Procedure and Promotion of Freedom Act, even if a provision of the Convention were not covered by Libyan legislation, the provisions of the Convention against Torture are binding on the national courts by virtue of the fact that the Convention acquired binding force as soon as it was ratified by the people's congresses and published in the Official Gazette, as happened in the case of the Convention under review in this report.

How are the provisions of the international Convention binding on the national courts in Libya?

The overriding principle in Libya is that international conventions that have been ratified by the people's congresses acquire binding force and prevail over national legislation. Human rights conventions enjoy special status in this regard. In accordance with that principle, the texts of international conventions are binding and enforceable without the need to incorporate their provisions in corresponding national legislation. In our view, the provisions of the Convention against Torture should be incorporated in the national legislation of States in which national law prevails over the provisions of international conventions from the standpoint of their binding force on the national courts. However, this does not apply to Libya in view of the position that it has adopted.

The procedure for ratification of international conventions

The procedure for ratification of international conventions consists in the submission of the convention to the people's congresses under the agenda item "Ratification of conventions". The People's Bureau for Foreign Liaison and International Cooperation submits the convention, together with an explanatory memorandum, in its capacity as the body empowered to implement the decisions of the people's congresses in the field of foreign policy and treaties concluded with foreign States or conventions, such as the Convention against Torture, to which Libya is a party.

II. Safeguards provided by Libyan legislation to ensure the proper implementation of the Convention against Torture

Legal and legislative provisions to protect fundamental rights and freedoms

The Libyan legislation currently in force comprises a series of safeguards to protect fundamental personal freedoms and rights and strengthen the measures to which Libya is committed as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This protection consists in the following:

1. The principle of the legality of legislation (rules of justice and equity)

In accordance with this principle, any citizen who believes that a legislative enactment is incompatible with his fundamental freedoms and rights is entitled to contest the legality of that enactment in the light of the rules of justice and equity set forth in article 2 of the Civil Code, under which the rules of justice and equity are regarded as basic criteria for an assessment of the legality of legislation.

In keeping with this principle, the legality of any legislation that is not based on the rules of justice and equity can be challenged before the courts and the proceedings in this connection can be pursued to the highest judicial level in Libya, namely the Supreme Court whose judgements and rulings are binding on the Libyan courts and Administration.

Given the fact that the rules of justice and equity have legally binding force, any interested party is undoubtedly entitled to invoke them before the courts when challenging the legality of legislation that is incompatible with that principle and prejudicial to fundamental freedoms and rights. This actually strengthens the safeguards that the Convention against Torture endeavours to ensure in the legislation of the States parties thereto and is consistent with the letter and the spirit of the Convention, and particularly the requirements of article 13 thereof.

2. The Penal Code

The following provisions of the Penal Code (in the chapter on violations of personal freedoms) can be adduced in evidence in this connection:

Article 435 of the Penal Code

(Cases in which a public official personally engages in acts of torture or orders his subordinates to engage in such acts, corresponding to article 4 of the Convention against Torture).

Article 435 stipulates that any public official who personally tortures or orders the torture of accused persons is punishable by a term

of 3 to 10 years' imprisonment. This provision of the Libyan Penal Code offers full scope for the application of article 4 of the Convention against Torture, since the practice of torture is prohibited by law regardless of whether it is committed in person by a public official or through orders issued to his subordinates.

Article 431 of the Penal Code (Abuse of authority against any person, corresponding to article 4 of the Convention)

This provision prescribes a penalty of imprisonment and a fine of up to 250 dinars for any public official who, in the discharge of his duty, uses violence against any person in such a way as to detract from his dignity or cause him physical pain.

This provision is supplemented by article 428, paragraph 1, of the Penal Code, which stipulates that anyone who abducts, detains or confines any person or deprives him of his personal liberty by force, threats or deception is punishable by a term of up to five years' imprisonment. Paragraph 2 of the same article further stipulates that the penalty shall be a term of up to seven years' imprisonment if the offence is committed by a public official exceeding the limits of his official authority.

Accordingly, the detention of persons, as an offence against personal liberty, is punishable by law regardless of whether the perpetrator is an ordinary person or a public official. However, Libyan law prescribes a more severe penalty when the act is committed by a public official acting in his official capacity. This policy, constitutes an effective deterrent against violations of personal freedoms and rights by the Administration. The use of violence against persons inevitably causes suffering or physical injury and, if accompanied by detention or restriction of liberty, constitutes physical or mental torture in the eyes of the law and mental torture may have a more detrimental effect than physical pain.

Article 433 (unlawful arrest)

Article 434 (unjustified restriction of personal liberty)

These two articles of the Penal Code, which correspond to article 16 of the Convention against Torture, prescribe a penalty of imprisonment and a fine for unlawful arrest (art. 433) or unjustified restriction of personal liberty (art. 434). The latter article covers offences relating to the conduct of public officials responsible for the administration of prisons or places designated for the enforcement of preventive measures. These offences are: admitting a person to a prison or accommodating him in a place designated for the enforcement of preventive measures without an order from the competent

authorities, refusing to obey their order to release the person concerned, or unjustifiably prolonging the duration of a sentence or a preventive measure for a legally invalid reason.

Article 16 of the Convention is implemented fully in these provisions.

3. The Code of Criminal Procedure (legality of arrest)

Article 30 of the Code of Criminal Procedure corresponds to article 13 of the Convention against Torture.

The measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, which the Convention urges States parties to incorporate in their national legislation, are reinforced by the provisions of the Libyan Code of Criminal Procedure, article 30 of which (concerning the legality of arrest) stipulates that no one can be arrested or imprisoned except by order of the legally competent authorities.

Article 30 of the Libyan Code of Criminal Procedure provides the safeguard which article 13 of the Convention requires of every State party. Article 34 is consistent with the spirit of the Convention in so far as it guarantees the inviolability of residential premises except in the circumstances defined by law or in the event of a request for assistance from within or in the event of fire or flood, etc.

4. The Civil Code (concerning compensation for damage)

Articles 166 and 167 of the Code correspond to article 14 of the Convention.

Under article 166 of the Civil Code, any person who commits an error that causes damage to a third party has an obligation to pay compensation.

Article 167 of the same Code further stipulates that a person be held responsible for his unlawful acts committed at a time when he is able to distinguish between right and wrong.

These articles are fully applicable to any person who causes damage and to any perpetrator of an illegal act, regardless of whether the offender is a public or private body, an ordinary individual or a public servant, subject to the general rules and well-known principles of legal liability.

Any victim of an act of torture is entitled to claim compensation either through an independent action brought before the civil courts or by filing a suit for damages before the criminal courts. Both courses of action are in keeping with the principle of the right to compensation, as recognized in article 14 of the Convention.

The general purport of Libyan legislation, as illustrated by the Green Document on Human Rights, the provisions of the Promotion of Freedom Act which

are derived therefrom, and the People's Court Act, allows scope for the implementation of the provisions of article 9 of the Convention, as we shall see during our review of those texts.

(a) The Green Document on Human Rights in the Age of the Masses

Article 26 of the Green Document on Human Rights gives every citizen the right to seek legal redress in respect of any violation or infringement of the rights and freedoms recognized in that Document. The Green Document acquired the force of law after it had been debated and adopted by the peoples' congresses and, accordingly, has legally binding effect and prevails over other legislation. The Document establishes the principle that it supersedes or amends any legislative enactment that is incompatible with its provisions.

(b) The People's Court Act

Article 1 of the People's Court Act makes provision for the establishment of a court, known as the People's Court, the purpose of which is to promote freedom, ensure legal redress for persons who have been wronged, prevent tyranny and oppression, strengthen the foundations of justice and security and consolidate the people's authority.

In accordance with article 2, paragraph 5, the People's Court is competent to hear appeals against measures or decisions that are prejudicial to the freedom and other basic rights of citizens. Under the provisions of article 2, paragraph 6, of the Act, the Court is also competent to hear appeals against measures, procedures or decisions that are prejudicial to the personal freedoms provided for in Part Three, Chapter IV, Sections 1 and 2 of the Penal Code if, for any reason, the matter is not referred to the judicial authority.

It is well known that Sections 1 and 2 of Chapter IV of the Libyan Penal Code govern offences against individual liberty and personal freedom. In this connection, the competence of the People's Court is of a remedial and protective nature in so far as the Court is competent to hear cases involving offences prejudicial to individual freedoms and basic rights which, for any reason, are not referred to the judiciary. This competence vested in the People's Court constitutes an additional safeguard and a deterrent against violations of basic freedoms and rights. These provisions as a whole are in keeping with the spirit of articles 4, 14 and 16 of the Convention against Torture.

(c) The Promotion of Freedom Act No. 20/1991

Articles 14, 15, 16, 17 and 21 correspond to articles 3, 5, 13 and 16 of the Convention against Torture.

The preamble to the Promotion of Freedom Act recognizes the Green Document on Human Rights and the international covenants and conventions on human rights and fundamental freedoms as primary sources and binding principles. In actual fact, the provisions of the articles that we will be quoting confirm the Act's derivation from the above-mentioned instruments and show that it allows ample scope for the implementation of the provisions of the Convention against Torture.

Article 14 of the Act stipulates that no person may be searched, interrogated or subjected to any deprivation or restriction of liberty except by order of a competent authority and in the circumstances and for the periods prescribed by law if he is accused of the commission of a legally punishable offence. Under the terms of article 14, a person may be held in preventive detention only at a location of which his family is notified and for the shortest period of time needed for the investigation and for the preservation of evidence.

Article 17 of the Act stipulates that the accused is deemed to be innocent until proved guilty by a court judgement. It is prohibited to subject the accused to any form of physical or mental torture or other cruel, inhuman or degrading treatment. The text of this article is consistent with article 16 of the Convention and gives effect to the measures which the States parties to the Convention undertake to incorporate in their national legislation.

Articles 15 and 16 of the Promotion of Freedom Act guarantee the confidentiality of correspondence, protect privacy and ensure the inviolability of homes, which may not be entered, searched or placed under surveillance except in the special circumstances listed in article 17.

With regard to extradition (article 3 of the Convention)

Article 21 of the Act stipulates that the Jamahiriya is a place of refuge for persecuted persons and freedom-fighters. Accordingly, such refugees who have sought its protection cannot be handed over to any other authority. This provision supplements article 9, paragraph 5, of the Penal Code which prohibits the extradition of persons accused of offences which are of a political nature, which relate to a political right of any individual or which are basically politically motivated.

Article 21 of the Promotion of Freedom Act and article 439, paragraph 1, of the Penal Code correspond to article 3 of the Convention against Torture.

Everyone's right to legal redress and to the services of a lawyer to defend him

Article 30 of the Promotion of Freedom Act (which provides for legal redress free of charge) corresponds to article 13 of the Convention.

Article 30 of the Promotion of Freedom Act stipulates that every person has the right to seek legal redress in accordance with the law and requires the court to provide him with all the requisite safeguards, including the services of a lawyer. In this connection, the following should be noted:

1. This article transcends the provisions of article 3 of the Code of Criminal Procedure, concerning the right to seek legal redress and the right of the accused to defence counsel.

2. The safeguards pertaining to legal redress and the right of defence, as provided for in article 30 of the Promotion of Freedom Act, are absolute and are not restricted to criminal cases, nor is legal aid confined to appeals brought before the Supreme Court. In fact, this article makes provision for safeguards and defence free of charge in all the courts and at all procedural levels.

3. These provisions cover the requirements of article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this connection, it should also be noted that the text of article 429, paragraph 1, of the Penal Code, concerning the use of violence as a means of coercion, corresponds to the second sentence of article 13 of the Convention.

Under article 32 of the Promotion of Freedom Act, it is prohibited for any authority to exceed its terms of reference by interfering in matters outside its jurisdiction. It is also prohibited for any authority to intervene in criminal investigation affairs unless it has been duly empowered to do so.

In this regard, the Act clearly reflects the Libyan legislature's desire to inhibit the invocation of exceptional circumstances, which the administrations of modern States frequently use as a pretext to justify violations of the rights of individuals.

In accordance with the provisions of article 34, the rights recognized in the Promotion of Freedom Act are not subject to any derogation or statute of limitations nor can they be waived since, in the eyes of the law, this is a matter of public policy (ordre public). Article 35 further stipulates that the provisions of this Act are fundamental and cannot be superseded by contradictory legislative enactments. In other words, they prevail over all conflicting legislation. This constitutes a significant legislative guarantee of the furtherance of human rights and fundamental freedoms and also

strengthens the safeguards which the Convention against Torture seeks to incorporate in national legislation in order to ensure the proper implementation of its provisions.

Part Two

Judicial safeguards

The judiciary plays a particularly important role in its capacity as the principal source of safeguards for the protection of basic rights and freedoms. As stipulated in the Provisional Constitutional Declaration and article 31 of the Promotion of Freedom Act, the judiciary is independent and, in its administration of justice, is subject to no authority other than that of the law. The same principle is also emphasized in the Organization of the Judiciary Act. Accordingly, the independence of the judiciary is recognized in the Promotion of Freedom Act, the nature and sources of which (consisting in the Green Document on Human Rights and the international covenants and conventions on human rights) turn it into a reliable instrument for the protection of the right to legal redress whenever the freedoms and rights of individuals and the legislative safeguards that have been provided in this regard are violated.

The role of the Libyan judiciary in regard to safeguards

1. The Supreme Court (rulings of the Supreme Court concerning the inadmissibility of evidence or confessions obtained through coercion, torture or violence)

The Supreme Court is the highest judicial body and the Libyan courts are bound to apply the principles and rules that it deduces or establishes in regard to safeguards of human rights and freedoms, etc. The rulings of the Supreme Court are also binding on the Administration in its decisions, precedures and conduct.

With regard to the application of article 15 of the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, the principles established by the Supreme Court in many of its rulings are based on the inadmissibility of statements or confessions made under coercion or torture, as can be seen from the series of rulings quoted, by way of example, in the body of this report.

It goes without saying that article 15 of the Convention became binding on the national courts following Libya's accession to that Convention and its ratification by the people's congresses. This would have been the case even if the Libyan legal system had not already provided reliable safeguards in the field referred to in article 15. With effect from the date of the announcement of Libya's accession to that Convention, its provisions became

binding on the national courts as a whole by virtue of the binding force which the Convention acquired following its ratification and publication. The provisions of the Convention therefore prevail over the provisions of national legislation, in accordance with the principle that Libya has adopted in its legislation.

2. Examples of rulings of the Supreme Court concerning the implementation of article 15 of the Convention

(a) "No confession, regardless of its importance, is admissible if it was obtained through coercion" (ruling of the Supreme Court in Criminal Appeal SC/26/354).

(b) The trial court must examine, verify and respond to the arguments put forward in defence of the accused, as soon as they have been stated, in an appropriate manner consistent with the requirements of reason and logic. If it fails to respond to them in such a way as to refute them, or if its response is vitiated by the acceptance of statements presumably made under coercion as proof of guilt, its judgement must be regarded as defective due to the lack of substantiation and must therefore be set aside. (Ruling of the Supreme Court in Criminal Appeal SC/33/165).

(c) "No confession or acknowledgement of guilt obtained through coercion is admissible" (ruling of the Supreme Court in Criminal Appeal SC/24/89).

(d) "The trial judge must verify any allegation by the accused to the effect that a confession attributed to him was extracted from him through coercion" (ruling of the Supreme Court in Criminal Appeal SC/24/89).

These rulings of the Supreme Court signify the following:

(i) The inadmissibility in evidence, regardless of its value, of confessions or statements made under coercion of any type whatsoever.

(ii) The imperative principle that the trial judge must examine and verify any allegations made by the accused concerning the truthfulness of confessions attributed to him or their extraction through the use of force or coercion. If the judge fails to do so, his judgement is vitiated through lack of substantiation and must be set aside.

3. The criminal courts

These safeguards are evident in fields governed by the provisions of the Promotion of Freedom Act, the Penal Code and the Code of Criminal Procedure, to which reference has already been made. We have seen how the criminal

courts in Libya have an obligation to apply the principles established by the Supreme Court in the same way as the other provisions of Libyan law.

This is clearly illustrated by the inadmissibility of confessions obtained through coercion or force and the illegality of searches or arrests which are carried out by an unauthorized person or by way of encroachment on the jurisdiction of another duly authorized body or which are accompanied by the use of force or degrading treatment prejudicial to human dignity.

Under the provisions of articles 428, paragraphs 1 and 2, and 435 of the Penal Code, members of the Administration are liable to the penalties, including compensation, prescribed for the offences specified therein. We have seen that Libyan law prescribes heavier penalties whenever the offenders are public officials. The judgements handed down by the criminal courts in this connection are illustrated by the following:

(i) Case No. 130/90, Zawiyat al-Dahmani. Torture and abuse of authority. Six months' penal servitude.

(ii) Case No. 714/91, Qarqarish - Tripoli. Penal servitude and a fine of 150 dinars for torture, assault and battery.

(iii) Judgement handed down by the Sixth Division of the Tripoli Criminal Court in 1989. Six years' imprisonment. The defendant was a police officer.

(iv) Judgement handed down by the Sixth Division of the Tripoli Criminal Court in 1990. Three years' imprisonment for torture, assault and battery. The defendant was a member of the security forces.

(v) Judgement handed down by the Fifth Division of the Tripoli Criminal Court in 1990. Three years' imprisonment for torture.

4. The administrative courts

The law provides additional protection for human rights and freedoms when they are subjected to violation by administrative officials. The latter face criminal prosecution for any such violations that they commit.

5. The civil courts

Under the provision of articles 166 and 167 of the Civil Code, compensation can be claimed by bringing an independent action before the civil courts or by filing a claim for damages with the criminal courts during their hearing of a criminal case. As already mentioned, this is in keeping with article 15 of the Convention against Torture.

In this connection, it should be noted that, in our opinion, the legislative and judicial safeguards which States parties have an obligation to provide in order to ensure the proper implementation of the Convention against Torture depend on the following two factors:

(a) The existence of legislation guaranteeing the rights that the Convention seeks to protect, and the possibility of applying to the courts for protection of those rights whenever they are subjected to infringement or violation through any act.

(b) Public awareness of the importance of those rights and the need to protect them from potential encroachments by modern States, which are diligently endeavouring to expand the scope of their interference with individual freedoms on the pretext of the need for regulation, planning and the application of modern administrative concepts. This problem is not confined to a particular country or a specific geographical area.

Replies to other questions raised by members of the Committee

The jurisdiction of the Libyan courts in the light of articles 5, 6, 8 and 9 of the Convention

The question of the jurisdiction of the Libyan courts arises in the following two contexts:

1. The commission of an offence by a Libyan or foreign national in Libyan territory or its equivalent (arts. 4, 5 and 6 of the Libyan Penal Code)

The provisions of Libyan criminal law apply to any Libyan or foreign national who commits, in Libyan territory, any legally proscribed offences. Libyan territory is deemed to include Libyan aircraft and ships, wherever they may be, unless they are subject to foreign legal jurisdiction under the terms of international law (art. 4 of the Libyan Penal Code).

The provisions of the Penal Code also apply to offences committed abroad, as in the case of a person who commits or aids and abets in the commission outside the country (Libya) of an act which is regarded as an offence committed wholly or partly in Libya (art. 5 of the Penal Code).

Whereas these two provisions govern the commission of offences by Libyan or foreign nationals in Libyan territory or its equivalent, i.e. on Libyan ships or aircraft, article 6 of the Penal Code applies solely to Libyan nationals who commit an act which, under Libyan criminal law, constitutes a felony or a misdemeanour and who subsequently return to Libya. They are tried by the Libyan courts, provided that the culpable act constitutes a punishable offence under the law of the country in which it is committed.

In the light of these provisions, it can be said that articles 4, 5 and 6 of the Libyan Penal Code fully cover the cases referred to in article 5 of the Convention against Torture. In accordance with these provisions, the Libyan courts have jurisdiction in cases in which a Libyan or foreign national commits an act that is designated as an offence in article 4 of the Convention, regardless of whether the said act is committed in Libyan

territory or its equivalent (on Libyan ships and aircraft), whether the offence is committed wholly or partly in Libya or whether the perpetrator of the act is the principal offender or an accomplice.

2. The detention of a foreigner suspected of having committed an act of torture (arts. 6, 7, 8 and 9 of the Convention)

Treaties which Libya concludes with foreign States and conventions to which it accedes become binding and enforceable in Libyan territory when they have been ratified by the people's congresses and published in the Official Gazette, as already explained.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is covered by this rule and therefore became enforceable and binding on the Libyan courts with effect from its ratification by the people's congresses and its publication in the Official Gazette. In accordance with article 12 of the Penal Code, the Convention acquired the status of special legislation and prevails over the provisions of any conflicting general legislative enactment.

It can be said that, if a foreign national who is believed to have committed any of the acts referred to in article 4 of the Convention against Torture is found to be residing in Libyan territory, the Libyan judicial authorities have jurisdiction to take the measures specified in articles 6, 7 and 9 of the Convention in view of the fact that there is no inconsistency between Libyan legislation and those articles.

The question of extradition is governed by articles 8 and 9 of the Penal Code, which accord precedence to international conventions and customary practices. At all events, article 9 of the Penal Code and article 20 of the Promotion of Freedom Act prohibit extradition in the cases referred to in article 3, inter alia, of the Convention. Having examined the texts, we do not believe that any problem could arise which might prevent the Convention against Torture from being regarded as a basis for extradition in the case referred to in article 8, paragraph 2, of the Convention.

In short, it can be said that articles 5, 6, 7, 8 and 9 of the Convention against Torture are put into effect by the provisions of articles 4, 5, 6, 8 and 9 of Libya's Penal Code and other legislation, to which reference has already been made. This answers one of the questions raised by the distinguished Committee.

Definition of political offences

With regard to the inadmissibility of extradition in the case of political offences, paragraphs 6 and 7 of article 9, of the Libyan Penal Code stipulate as follows:

"From the standpoint of criminal law, a political offence is deemed to be any offence prejudicial to a political interest of the State or to a political right of individuals. An ordinary offence which is committed primarily for a political motive is also regarded as a political offence".

From this definition, it is evident that:

(i) A political offence is one which prejudices a political interest of the State or a political right of individuals.

(ii) An offence is political if it is committed primarily for a political motive even if, from a legal standpoint, it constitutes an ordinary offence.

(iii) In this regard, the political interests of the State and the political rights of individuals are regarded as equally important. Accordingly, cases involving human rights are regarded as falling within the sphere of the political rights of individuals in which extradition is inadmissible, as stipulated in the provisions of article 3 of the Convention against Torture. This answers another question raised by the Committee, concerning the definition of political offences in Libyan law.

Interrogation

In Libyan law, interrogation is governed by the provisions of articles 26, 54 and 112 of the Code of Criminal Procedure, an examination of which indicates that the Libyan legislature differentiates between interrogation and the mere hearing of the statements of the accused; the former forms part of the official functions of the public prosecutor and the examining magistrate, whereas the latter is carried out by a criminal investigation officer within the limits laid down in article 26, paragraph 1, of the Code of Criminal Procedure. The interrogation always takes place immediately after the arrest or committal.

Who carries out the interrogation?

1. The office of the competent public prosecutor

The accused must be interrogated by the office of the competent public prosecutor within 24 hours from the time at which he is referred thereto by the criminal investigation officer. During that period, the office of the public prosecutor must either remand the accused in custody pending

investigation or release him, depending on its assessment of the charges brought against him (art. 26 of the Code of Criminal Procedure).

2. The examining magistrate

The examining magistrate conducts the investigation if the case is referred to him or if he has been assigned to carry out that task and, from that time, he is in charge of the investigation, in which he has sole jurisdiction, in accordance with article 54 of the Code of Criminal Procedure.

The examining magistrate is empowered to assign a member of the public prosecutor's staff or a criminal investigation officer to examine one or more aspects of the case, but not to conduct the interrogation which, under the provisions of article 54 of the Code, falls within his exclusive terms of reference from the time when he is appointed to examine the case file.

Fines

1. In Libyan law, a fine is regarded as an incidental punishment which, when combined with a term of imprisonment, supplements that penalty due to the nature or seriousness of the offence committed.

2. However, the extent of the punishment imposed on the accused in the form of a fine does not affect the amount of compensation due to a victim of torture which results in death, disability or a lesser injury. In a recent judgement handed down in a case heard at Tripoli (Sidi al-Sa'ih), a public official was sentenced to 10 years' imprisonment, together with a fine, and was ordered to pay compensation amounting to 200,000 Libyan dinars, i.e. the equivalent of $660,000.

3. Fines, being incidental punishments, are imposed at the discretion of the judge. In cases in which torture or ill-treatment result in disability or death, the judiciary usually imposes longer terms of imprisonment and heavier fines.

Amnesty

Amnesty instruments and their effects

Amnesty is of two types: comprehensive and general or private and individual.

1. General amnesty

This is promulgated by the General People's Congress after it has been submitted to, and discussed by, the people's congresses.

2. Individual amnesty

This is granted by order of the General People's Committee on the basis of a recommendation by the governor of the prison to the General People's Committee for Justice, which refers it to the General People's Committee for the issue of the amnesty order.

Both general and individual amnesties extinguish all the effects of the offence, the penalty and the associated measures, regardless of whether they are primary or incidental (art. 106 of the Penal Code).

Duration of custody for purposes of investigation or interrogation

The period of custody must not exceed 24 hours, regardless of whether the interrogation is conducted by the office of the competent public prosecutor, the examining magistrate or, when the accused wishes to make a statement, a criminal investigation officer.

In cases in which an examining magistrate, although assigned to conduct an interrogation, fails to do so within the legally stipulated time-limit, the Department of Public Prosecutions intervenes and either:

(i) requests the magistrate to conduct the examination or appoint another magistrate to do so; or

(ii) if this is not possible, and if the stipulated time-limit for custody has expired, releases the accused.

The accused can be held in custody only at a publicly designated location within the criminal jurisdiction area in which the offence was committed and he cannot be interrogated by the court without his consent. The accused also has the right to refuse to answer any question that is likely to prejudice his legal status in the proceedings.

The concept of the use of violence

The question of the use of violence is dealt with in articles 429, 431 and 435 of the Penal Code and also in the Promotion of Freedom Act. In those texts, violence is either accompanied by, or synonymous with, threats. This implies that violence is a material act that causes physical pain or detracts from the dignity of the human person (art. 431 of the Penal Code, concerning the abuse of authority against persons).

The principal criterion of an act of violence lies in the effects that it entails, whether physical (injury or maiming) or psychological (directly influencing a person's will in such a way as to induce him to engage in an involuntary act). As indicated in article 429 of the Penal Code, this is the case when violence is used to coerce or harm any person or induce him to confess to the commission of an act that he did not commit.

It can be inferred from those texts that acts of violence include the forceful laying hold of any part of a person's body, pushing him violently, kicking him or striking him. All these are acts which transcend the mere utterance of words or threats.

Crimes punishable by death under the Libyan Penal Code

1. Crimes prejudicial to the external integrity of the State.
2. Crimes prejudicial to the internal security of the State.
3. Crimes against a foreign State.
4. Economic crimes.
5. Crimes detrimental to public safety.
6. Crimes of murder.
7. Crimes punishable under the Narcotics Act, such as the wilful murder of a citizen or a public official during, or on account of, the discharge of his official duty of enforcing the provisions of that Act.

From the above classification of capital crimes, it can be seen that:

1. Most of the specified crimes are of the type committed in time of war, in accordance with the practice adopted in all codes of law throughout the world.
2. Most of these crimes are prejudicial to the internal or external security of the State and are punishable under the laws of States which have abolished the death penalty.
3. The other capital crimes relate to public safety, serious economic offences and acts of murder.

The situation in regard to the death penalty in Libya

As we have seen, Libyan law prescribes the death penalty for clearly specified categories of crimes. However, a new aspect in this regard lies in the fact that death sentences are discussed and reviewed by the people's congresses, which restrict them to a limited number of capital crimes.

The people's congresses have issued an explanatory memorandum containing the following comments: 2/

1. Legislation concerning the death penalty must be based on community law.
2. The death penalty is imposed for conspiracy against the revolution of 1 September 1969, its achievements and the people's authority.
3. The death penalty is imposed for wilful murder.

This memorandum clearly shows that people's congresses, which constitute the legislature, are endeavouring to restrict the execution of the death penalty to a limited number of capital crimes. However, no final decision has yet been taken on the abolition of the death penalty and, in this regard, Libya is no exception since, as in many countries throughout the world, the debate is still continuing between advocates of the abolition of the death penalty and those who are in favour of retaining it. Nevertheless, it can be said that, in Libya, there is a trend towards the regulation of this penalty within the framework of community law and attempts are being made to restrict it to a limited number of capital crimes, as already mentioned. 3/

Prison conditions in Libya (in the light of art.16 of the Convention)

In accordance with article 31 of the Code of Criminal Procedure, prisons are places designated for the confinement of offenders and no person can be imprisoned in places other than those so designated. It is prohibited for the governor of a prison to admit any person thereto except under the terms of an order signed by the competent authority or to retain any person therein after the expiration of the stipulated period of confinement.

The authority responsible for the control and supervision of prisons

The Secretary (Minister) of Justice is vested with authority to control and supervise prisons either in person or by delegating members of the Department of Public Prosecutions to that end.

Every court of summary jurisdiction has an inspecting magistrate who is empowered to control and supervise prisons and conditions of detention therein in the same way as the Department of Public Prosecutions.

Prison inspection visits (art. 32 of the Code of Criminal Procedure)

Article 32 of the Code empowers members of the Department of Public Prosecution, inspecting magistrates and presidents and vice-presidents of the courts of first instance and the courts of appeal to visit the public prisons in their areas of jurisdiction in order to:

1. Ascertain that no person is being confined unlawfully therein and examine the prison registers, the arrest warrants and the confinement orders.

2. Contact any detainee, listen to any complaint that he might wish to make, and promptly investigate and deal with such complaints.

Prisoners' complaints and unlawful imprisonment (article 33 of the Code of Criminal Procedure

Every prisoner has the right to submit written or verbal complaints, at any time, to the governor of the prison and to request him to transmit them to the Department of Public Prosecutions or the competent magistrate. The governor is legally bound to accept and promptly transmit such complaints after entering them in the register that every prison must maintain to that end (art. 33, para. 1, of the Code of Criminal Procedure).

The same article further stipulates that: "Anyone who comes to know that a person is imprisoned unlawfully or in a place other than a legally designated prison must notify a member of the Department of Public Prosecutions or the competent magistrate, who must immediately proceed to the place in which the said person is confined. On arrival, he must conduct an investigation, release the illegally confined person and draw up a report on the circumstances of his confinement".

The following can be deduced from those texts:

1. Direct authority to supervise prisons is exercised by, or delegated to, members of the Department of Public Prosecutions and inspecting magistrates in the area covered by every court of summary jurisdiction. This authority can also be delegated to the presidents and vice-presidents of a Court of appeal.

2. This authority empowers members of the judiciary and the Department of Public Prosecutions to visit and inspect prisons, look into the situation of prisoners, examine the prison records, arrest warrants and confinement orders, and release any prisoner who is being unjustifiably confined therein after investigating his case and drawing up a report thereon.

3. Every prisoner has the right to submit a complaint to the governor of the prison, who must refer it to the Department of Public Prosecutions or the competent magistrate so that the complaint can be investigated and legal action taken in that regard.

4. The supervision and control of prisons is not restricted to members of the Department of Public Prosecutions; it is also exercised by inspecting magistrates and presidents and vice-presidents of courts of appeal. This is an indication of the legislature's desire to provide further safeguards, since the prosecuting authority might have a relationship with the Secretary of Justice which could affect the proper exercise of its power to supervise and control prisons.

Article 16 of the Convention is implemented by these texts, which cover any act of torture or other cruel or inhuman treatment which a public official might commit, or order one of his subordinates to commit, against a prisoner (art.432 of the Penal Code). Moreover, in the event of any shortcoming in Libyan legislation, article 16 is binding on the judiciary, which must apply all its provisions relating to any other type of ill-treatment to which no reference is made in Libyan legislation.

With regard to the prison system in Libya, it should also be noted that article 24 of the Prisons Act introduces the concept of open prisons in which prisoners sentenced to a short term of imprisonment can work for a limited number of hours each day after which they return to their homes in accordance with the legal provisions governing short terms of imprisonment.

Under the prison regulations, every prisoner sentenced to a longer term of imprisonment is entitled to annual periods of leave and can spend public holiday periods with his family and friends. However, the Prisons Act makes entitlement to these periods of leave conditional on the prisoner's good behaviour.

Conclusion

Our purpose in submitting these Libyan legislative texts and comparing them with the provisions of the Convention against Torture is to emphasize the Jamahiriya's determination to comply with the provisions of the Convention. As we have seen, the Promotion of Freedom Act, the People's Court Act, the Penal Code, the Code of Criminal Procedure and the Civil Code, as well as the general principles on which those instruments are based, constitute an appropriate foundation not only for the safeguards provided under Libyan law but also for the safeguards which the Convention requires of every State party thereto.

The principle that international conventions to which Libya accedes become applicable from the date of their ratification and publication constitutes an additional safeguard in so far as any shortcoming in Libyan legislation is remedied by the Convention, which is binding on the national courts in all such matters.

In this connection, it should also be noted that the subject of human rights is taught as part of the syllabus for the first and second years at the Faculty of Law of the University of Libya. Since last year, the Green Document on Human Rights has also been taught at all stages of intermediate and secondary education. This educational policy, which is reflected in the syllabuses of the universities and intermediate and secondary schools in Libya, has accompanied the incorporation of those human rights instruments in Libyan legislation and provides legal and judicial safeguards for their proper implementation.

Finally, I hope that the chairman and members of the distinguished Committee will allow me to conclude this additional report by pointing out that the relationship between individual citizens and the modern State, as well as the relationship between individuals and the law and authority, is an intricate and complex process. The State seeks to intervene in various spheres of life in order to assert its omnipresence and this tendency is one of the most adverse aspects of the form which modern States have assumed. Individuals, on the other hand, wished to exercise greater freedom in all fields, which is a legitimate aspiration. The essence of the conflict between the individual and law and authority lies in the complex socio-political dimensions of this problem. Hence, regardless of the extent to which freedoms are safeguarded by legislation in a particular country, individuals invariably commit breaches of the law and safeguards are inevitably subject to abuses and

violations by administrations. It is therefore difficult to maintain a balance in view of the nature of the relationship between the citizen and the State.

I trust that the clarifications contained in this additional report will meet the Committee's requirements and I am ready to answer any further inquiries in this regard.

Notes

1/ Following its ratification by the people's congresses, the Convention against Torture was published in the Official Gazette No. 20/89 on 9 October 1989.

2/ Resolutions of the eleventh session of the people's congresses held from 25 February to 3 March 1986.

3/ See the attached list of the death sentences handed down and those actually carried out in recent years.